

Internal Revenue Service

Number: **200814009**

Release Date: 4/4/2008

Index Numbers: 355.01-00, 368.04-00,
1504.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B04
PLR-132905-07

Date:
November 07, 2007

LEGEND

Distributing =

Contributed Sub =

Sub 1 =

Sub 2 =

Sub 3 =

DRE Holdco =

Holdco =

Finance LLC =

Business A =

Business B =

Business C =

Country X =

a =

b =

Dear :

This letter responds to your July 17, 2007 request for rulings on certain federal income tax consequences of a Proposed Transaction (described below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (described below) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7).

SUMMARY OF FACTS

Distributing, the common parent of an affiliated group of companies that files a consolidated federal income tax return on a calendar-year basis, is wholly owned by

DRE Holdco, a Country X company that is disregarded as an entity separate from its owner for federal tax purposes under § 301.7701-3 of the Procedure and Administration Regulations (a “disregarded entity”). DRE Holdco also wholly owns Sub 1, a domestic corporation and the common parent of an affiliated group of companies. Holdco, a Country X company treated as a corporation for US tax purposes, wholly owns DRE Holdco. Through a series of foreign holding companies, Holdco is owned by a group of investors. Together, Distributing and Sub 1 wholly own Finance LLC, a partnership formed as a clearing house to facilitate the issuance of third party debt (the “Third Party Debt”). Finance LLC was formed to satisfy certain requests of third party banks and serves as a mere conduit between the banks and Distributing and Sub 1. Distributing wholly owns Sub 2, Sub 3, and Contributed Sub.

Sub 2 primarily conducts Business B, Sub 3 primarily conducts Business C, and Contributed Sub primarily conducts Business A. Together, Business B and Business C make up Distributing’s core businesses (the “Core Businesses”). The financial information submitted by Distributing indicates that Business B (conducted by Sub 2) and Business A (conducted by Contributed Sub) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing intends to separate the Core Businesses from Business A (i) to rationalize the management, supervisory structure, and responsibilities of the Core Businesses and Business A and permit each to make decisions based upon functional lines, (ii) to place Business A under DRE Holdco and thus give it the ability to make and implement decisions independently of the Core Businesses, and (iii) to allow Business A to establish its own identity in the marketplace by separating it from the Core Businesses (collectively, the “Corporate Business Purposes”).

PROPOSED TRANSACTIONS

To achieve the Corporate Business Purposes, Distributing proposes to effect the following steps (the “Proposed Transactions”):

- (i) Distributing will contribute all of its shares of Contributed Sub common stock to a newly formed holding company (“Controlled”) in exchange for Controlled stock and a Controlled security in the amount of approximately \$a (the “Controlled Security”) (together, the “Contribution”).
- (ii) As part of an overall plan, Distributing will distribute (a) all of the Controlled stock pro rata to its sole shareholder, DRE Holdco (a disregarded entity wholly owned by Holdco) and then (b) the Controlled Security to Finance LLC in partial exchange for a Distributing security held by Finance LLC (the “Distributing Security”) ((a) and (b) together, the “Distribution”). Immediately

after the Distribution, DRE Holdco will wholly own both Distributing and Controlled.

Although the form and timing are unclear, it is expected that the stock of Sub 1 held by DRE Holdco will be transferred to a subsidiary of Distributing in the near future (the "Sub 1 Transfer"). The interests in Finance LLC held by Distributing and Sub 1 before the Sub 1 Transfer will continue to be held by Distributing and Sub 1 in the same proportions after the transfer.

REPRESENTATIONS

The taxpayer makes the following representations regarding the Contribution and the Distribution:

(a) The indebtedness owed by Controlled to Distributing, if any, after the Distribution will not constitute stock or securities. The Controlled Security held by Finance LLC will be owed solely to Finance LLC. Finance LLC will not distribute the Controlled Security to Distributing and has no plan or intention to dispose of the Controlled Security before its maturity. All cash transferred to Finance LLC in satisfaction of the Controlled Security (or any other securities it holds) or to service interest on the Controlled Security (or any other securities it holds) must be used to repay the Third Party Debt or to service interest on the Third Party Debt.

(b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(c) No part of the consideration to be distributed by Distributing will be received by a security holder as an employee or in any capacity other than that of a security holder of Distributing.

(d) The five years of financial information submitted on behalf of Business B conducted by Sub 2 (a member of the Distributing separate affiliated group ("SAG" as defined in § 355(b)(3)(B))) and Business A conducted directly by Contributed Sub is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted. Sub 2 is, and immediately after the Distribution will be, affiliated with Distributing in a manner that satisfies § 1504(a), without regard to § 1504(b). Following the Contribution, and immediately after the Distribution, Contributed Sub will be affiliated with Controlled in a manner that satisfies § 1504(a), without regard to § 1504(b).

(e) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Distribution in a

transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, Sub 2 has been the principal owner of the goodwill and significant assets of Business B and will continue to be such owner following the Distribution.

(f) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, Contributed Sub has been the principal owner of the goodwill and significant assets of Business A and will continue to be such owner following the Distribution.

(g) Following the Distribution, the Distributing SAG will continue the active conduct of Business B (through Sub 2), independently and with its separate employees.

(h) Following the Distribution, the Controlled SAG will continue the active conduct of Business A (through Contributed Sub), independently and with its separate employees.

(i) The Distribution will be carried out for the following Corporate Business Purposes: (i) to rationalize the management, supervisory structure, and responsibilities of the Core Businesses and Business A and permit each to make decisions based upon functional lines; (ii) to place Business A under DRE Holdco and thus give it the ability to make and implement decisions independently of the Core Businesses; and (iii) to allow Business A to establish its own identity by separating it from the Core Businesses. The Distribution is motivated, in whole or substantial part, by one or more of these Corporate Business Purposes.

(j) The Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(k) The total adjusted basis and fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (as determined under § 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.

(l) Any liabilities assumed (as determined under § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(m) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as

determined under § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(n) No intercorporate debt will exist between Distributing (or any of its subsidiaries) and Controlled (or any of its subsidiaries) at the time of, or after, the Distribution, other than intercompany loans that have arisen, or will arise, between the parties in the ordinary course of business. Finance LLC, which is owned approximately b percent by Distributing, will hold the Controlled Security that is distributed in the Distribution.

(o) Immediately before the Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing may have in the Controlled stock will be included in income immediately before the Distribution to the extent required by applicable regulations (see § 1.1502-19).

(p) Payments made in connection with all continuing transactions, if any, between Distributing (or any member of its SAG, including Sub 2) and Controlled (or any member of its SAG, including Contributed Sub) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(q) No two parties to the Proposed Transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(r) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(s) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or

(ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(t) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(u) The Controlled Security will be a security for federal income tax purposes. The Distributing Security is a security for federal income tax purposes.

(v) Immediately after the transaction (taking into account § 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(w) Neither Distributing nor Controlled will have been a U.S. real property holding corporation (as defined in § 897(c)) at any time during the five-year period preceding the Distribution, and neither Distributing nor Controlled will be a U.S. real property holding corporation immediately after the Distribution.

(x) The transfer of the stock of Sub 1 to a subsidiary of Distributing in the Sub 1 Transfer will not cause Finance LLC to terminate for federal income tax purposes under § 708(b).

RULINGS

Based solely on the information and representations submitted, we rule as follows on the Contribution and the Distribution:

1. The Contribution, followed by the Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” under § 368(b).
2. No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(a)).
3. No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).
4. The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).

5. The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).
6. No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).
7. No gain or loss will be recognized by Holdco (through DRE Holdco) on the Distribution (§ 355(a)(1)).
8. The aggregate basis of the Distributing stock and the Controlled stock in the hands of Holdco (through DRE Holdco) will equal the aggregate basis of the Distributing stock held by Holdco (through DRE Holdco) immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each immediately following the Distribution in accordance with §1.358-2(a) (§ 358(b)(2) and (c)).
9. The holding period of the Controlled stock received by Holdco (through DRE Holdco) in the Distribution will include the holding period of the Distributing stock on which the Distribution is made, provided the Distributing stock was held as a capital asset on the date of the Distribution (§ 1223(1)).
10. Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).
11. No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Finance LLC on the exchange of the Distributing Security solely for the Controlled Security, provided the principal amount of the Distributing Security surrendered equals the principal amount of the Controlled Security received (§ 355(a)(1)).
12. Distributing will not recognize any income, gain, loss, or deduction with respect to the Controlled Security, other than any (i) amount of income, gain, loss, or deduction that offsets Controlled's corresponding amount of income, gain, loss or deduction upon the deemed satisfaction of the Controlled Security resulting from the intercompany transaction regulations, (ii) deductions attributable to the fact that the Distributing Security may be redeemed at a premium, (iii) income attributable to the fact that the Distributing Security may be redeemed at a discount, or (iv) interest expense accrued with respect to the Distributing Security.
13. Following the Distribution, Controlled will not be a successor of Distributing for purposes of § 1504(a)(3). Therefore, Controlled and its direct and indirect subsidiaries that are "includable corporations" under § 1504(b) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of

corporations entitled to file a consolidated federal income tax return with Controlled as the common parent.

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both;
- (iii) Whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii);
- (iv) Whether the Controlled Security or the Distributing Security is a security for federal income tax purposes;
- (v) The federal income tax consequences of the Sub 1 Transfer; and
- (vi) The application of §§ 367, 897, or 1445 to the Proposed Transactions.

PROCEDURAL MATTERS

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Associate Chief Counsel (Corporate)